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HEARING ON SENATE BILL 6951, FOR THE RELIEF OF THE STATE OF PENNSYLVANIA.

COMMITTEE ON WAR CLAIMS,

Saturday, May 21, 1910.

The committee met at 10.30 o'clock a. m., Hon. Charles B. Law (chairman) presiding.

The CHAIRMAN. The full committee is not present, but there is a quorum. As we have a stenographer, the members who are not present can look over the report and ascertain what has been done. As the House convenes at 11 o'clock, we will proceed.

STATEMENT OF MR. H. M. FOOTE, OF WASHINGTON, D. C.

Mr. FOOTE. Gentlemen of the committee, I am very much obliged to you for this courtesy in giving me an opportunity to represent the governor here as his agent in this matter. I appear in behalf of a bill which was under consideration by your committee last year, but with the added provision of making an appropriation of \$50,000 to carry out the purposes of the bill. The Senate, however, has stricken out that provision and has left it as it stood before, without it.

It is a bill, as you will discover, which authorizes the accounting officers of the Treasury to adjudicate the claim of Pennsylvania for its expenses in putting its militia into the field to resist the invasion of General Lee in 1863. Pennsylvania had all it could do at that time to look out for the balance of its troops which it had in the service and was paying interest on a loan of \$3,000,000 for money which it had borrowed for that purpose. It was practically a bankrupt State at that time; the State had no available money to pay the ordinary war expenses of the Government. When General Lee crossed the line, President Lincoln telegraphed to Governor Curtin to call out the militia to cooperate with the national forces. The governor—this is all a matter of record—telegraphed he had no available funds to pay the expenses, whereupon the President and Secretary Stanton telegraphed back to him—and this is a matter of record—if he would get the money to pay the expenses of the militia that the Government would make an appropriation to reimburse the State. Thereupon the governor went to Philadelphia and had a consultation with several bankers of that city and arranged to borrow the money for that purpose. He borrowed it upon a year's, or more, time at 6 per cent interest.

After the militia had been mustered out, or withdrawn, rather, the State paid for their services and was subsequently reimbursed by the General Government for that payment. It also paid forty-one thousand and some odd dollars in interest on that loan. The legislature of the State, in 1863, passed a law appropriating the money to make

that payment good. Subsequently a joint resolution was passed by the legislature, reciting all these facts to which I have called your attention and memorializing the Congress to make an appropriation to make the State good. Thereupon the Congress, in April, 1866, passed a law appropriating \$800,000 for that purpose. The State paid six hundred and seventy-one thousand and some odd dollars for the loan to pay for these services.

On the 21st day of March, 1866, in pursuance of this resolution, a bill was introduced in Congress to pay this claim to reimburse the State. It was introduced for more than \$800,000. Mind you the payment amounted to about nearly \$800,000, the principal and interest. Mr. Stevens—I did not have this record before you before—when the bill was under consideration, said: “I move to amend in line 8 by striking out “nine” and inserting “eight,” so that it shall read “\$800,000.” The amendment was agreed to, and then Mr. Stevens proceeded to say:

This bill passed this House on a former occasion, and was lost between the two Houses.

In 1863, at the time of the invasion of Pennsylvania, the States of Pennsylvania, New York, and New Jersey sent a large number of troops under the proclamation of the President and at the call of the governors of the different States to cooperate in repelling that invasion. They were in the service, under command of officers of the United States. After the battle of Gettysburg, and the troops had withdrawn, they went on to settle the amount under the act of 1861, which authorized the treasurer to pay them. Fifteen million dollars had been appropriated for the purpose of settling all such debts by the act of February 25, 1862. In adjusting the accounts it was found that the accounts claimed and allowed to the States of New York and New Jersey absorbed the whole \$15,000,000 and a few dollars more. The few dollars due to New Jersey have since been paid.

At the time of the adjustment Pennsylvania agreed that she would allow her claim to remain back until the other States had been paid. As the invasion was in her territory it was thought that her troops should be last paid. But the \$15,000,000 had run out, and the Secretary of War and the President telegraphed to the governor of Pennsylvania, asking him to raise the money to pay the troops, and promising that at the meeting of Congress payment would be recommended. There was nothing in the treasury at the disposal of the governor, so he went to Philadelphia and raised from a few gentlemen there about \$700,000 and paid the troops. The accounts were since adjusted in the department here on the 4th of January, 1864. The amount allowed is \$671,476. It is that amount with the interest due to those individuals which has since been paid by the State of Pennsylvania that it is proposed to pay. Pennsylvania has paid it, and that State is now substituted for these individuals.

The purpose of the bill in appropriating \$800,000 in 1866 was to make the State good not only for the six hundred and seventy-odd thousand dollars which it borrowed and paid for the services of these troops, but the interest which the State had also paid on that money which it borrowed. I need not stop here to——

MR. SIMS. Did the \$800,000 bill pass?

MR. FOOTE. Yes, it passed.

THE CHAIRMAN. Do you mind if I interrupt you?

MR. FOOTE. No; I want to be interrupted.

THE CHAIRMAN. Now, according to the report of the Senate committee the items are given as follows: “For amount paid in August and September, 1863, \$671,476.43”?

MR. FOOTE. Yes.

THE CHAIRMAN. “For interest on the money borrowed to September, 1864, \$41,890.71; for expenses, \$52.47, making a total of \$713,419.61.” Now, it had been my understanding, until I came to look at these figures, that the amount that was paid was the

principal—that is, the amount the State of Pennsylvania had been reimbursed for was the principal sum.

Mr. FOOTE. Yes.

The CHAIRMAN. And that the contention here was over the interest and the expenses which the State of Pennsylvania paid to secure the loan.

Mr. FOOTE. That is just the contention, and that is all.

The CHAIRMAN. Now, then, according to that, the amount that would have been allowed by the Federal Government for the principal would have been \$671,476.43?

Mr. FOOTE. Yes.

The CHAIRMAN. Yet according to the report it seems the first amount allowed was \$667,074.35, and a subsequent allowance of \$3,732.50, making a total of \$670,806.85?

Mr. FOOTE. Yes.

The CHAIRMAN. I did not know but what you could give us some explanation of the discrepancy?

Mr. FOOTE. When the accounting officers settled the claim of the State for the payment of these troops the State actually paid six hundred and seventy and some odd thousand dollars—the amount you have stated—for these troops; when the accounting officers settled with the State it was found the State had improperly paid some little items, you understand, made some mistakes in computation or otherwise, and they cut off three or four thousand dollars of it; a few years later it was reviewed, and three or four thousand dollars, or such a matter, was subsequently allowed.

The CHAIRMAN. But the \$670,806.85 is supposed to be the amount paid to cover the principal?

Mr. FOOTE. Yes, sir.

The CHAIRMAN. And the statement there that the principal sum was \$671,000 was simply the difference due to errors?

Mr. FOOTE. Exactly; due to errors. The only contention here, so far as I understand it, relates to the subject of interest, this item of \$41,000 of interest which the State paid to these bankers for the use of this money wherewith to pay these troops, and some fifty-odd dollars of expense the State went to in order to raise the money.

The CHAIRMAN. So, put in a nutshell, the proposition that is presented here is this: The State of Pennsylvania borrowed certain moneys to pay troops?

Mr. FOOTE. Yes.

The CHAIRMAN. The amount of the principal which it borrowed for that purpose it has been reimbursed for?

Mr. FOOTE. Yes.

Mr. SIMS. Interest, too?

Mr. FOOTE. No interest; that is just what we want.

Mr. SIMS. You did have a bill passed for \$800,000?

Mr. FOOTE. Mr. Sims, it was \$800,000, or so much as was necessary; it was a general appropriation to cover the whole thing.

Mr. SIMS. The \$41,000 of interest which the State paid for the borrowed money was never paid to it?

Mr. FOOTE. No, sir; not at all.

Mr. SIMS. Why was it not paid?

The CHAIRMAN. The principal question presented here is whether the Government shall reimburse the State for the money it cost the

State to get the loan, not for interest, but money which it actually paid to get this loan to help out the Government. Now, the point which, I think, is in the minds of the committee and which I would particularly like to have you discuss, is this: This bill calls upon the department to readjust this claim?

Mr. FOOTE. Yes.

The CHAIRMAN. Now, what is in the minds of the committee, according to discussions heretofore had in the committee room, is this: Why this should be sent to the court, or, I mean, to the department for readjustment rather than being sent to the Court of Claims under the Tucker Act for a finding of facts, which would put the thing in some concrete shape so that Congress could pass definitely upon that. That is, I think, the main question.

Mr. SPIGHT. And put the committee in possession of all those facts.

The CHAIRMAN. Why should the matter go to the department instead of to the Court of Claims? There is one case we have had here, the Rhode Island case, that was sent to the Court of Claims under the Tucker Act. The point is why there should be a distinction.

Mr. FOOTE. In reply to that suggestion I want to make this statement, that there is not a single question of fact in dispute in this case, not one. The Treasury Department admits every single fact that I set up and allege here; it admits that the State of Pennsylvania paid this interest, or these expenses, rather, for the purpose of getting this money wherewith to pay these troops.

Mr. SIMS. Have you a copy of the act appropriating the \$800,000?

Mr. FOOTE. Yes, sir. It provides for the reimbursement of the State of Pennsylvania.

Mr. SIMS. Why did they not pay that interest?

Mr. FOOTE. I will tell you why. At that time, in 1866, the accounting officers of the Treasury conceived the idea that this \$41,000 was simply interest. They were carried away with the idea that inasmuch as the Government never paid interest as such without specific legislation that they would withhold payment of it for further consideration.

Mr. SIMS. Why has Pennsylvania let this drag for about fifty years?

Mr. FOOTE. I will get to that in just a moment. A very short time after that, or just before that rather, in 1866, the State of Indiana had presented its claim, a similar claim, for reimbursement for interest on its war loan, interest which it had paid to borrow money to equip its troops for the purposes of the Federal Government. The Treasury Department refused to allow that interest claim, because they conceived it to be purely and simply an interest account against the Government, and the accounting officers undoubtedly followed the decision of that case.

Mr. SIMS. Is that a surmise of yours or do the accounting officers so report?

Mr. FOOTE. I am stating to you what I know as a reputable attorney, what the records show in the department. I have been all through this case, and I would not misrepresent a fact.

Mr. SIMS. I am not intimating such a thing, but I want to know what position the department took at that time as to why they would not allow the \$41,000.

Mr. FOOTE. It simply refused to pay this \$41,000 upon the theory that it was an interest claim which the Government was not bound to pay without specific legislation.

Mr. SIMS. I understand the law in that regard, that the Government does not pay interest. But here is an act reimbursing the State for what the State paid out on the principal matter.

Mr. FOOTE. Yes.

Mr. SIMS. But the interest has not been paid. Now, why has it taken fifty years to bring it before Congress?

Mr. FOOTE. I will tell you why it took all that time. Before the case was finally adjudicated in the Supreme Court of the United States, the case of the State of New York against the Government—and that was in 1890—all of these interest claims of the various States had been suspended—that is, the payment of them had been suspended.

Mr. SIMS. That would be over twenty years ago.

Mr. FOOTE. Yes, sir; upon the theory that they were interest claims, and not expenses to which the State went in order to get money to pay these troops. I had the honor of representing the Government of the United States in the Department of Justice in the trial of that New York State case and I set up the same defense the Treasury Department sets up, that it was an interest claim. You understand, the State of New York paid \$131,000 in interest, being money which it borrowed to equip its troops for the service of the Federal Government.

The CHAIRMAN. Do I understand you appeared in that New York case?

Mr. FOOTE. I appeared for the Government in that New York case; I was the assistant of the Attorney-General at that time. I took the position precisely as the Treasury Department had theretofore taken the position for all those years—that it was an interest claim. You understand there were two items of the claim. The Court of Claims held with me on one item, but decided against me upon the other item. There were cross appeals: they went up to the Supreme Court, and we went up there and argued the case. The Supreme Court then, for the first time in the history of these payments, announced the principle and established the doctrine that all of these interest items which the States had filed against the Federal Government were not interest accounts at all but legitimate expenses which the States had been to for the purpose of raising the money wherewith to pay their troops.

Mr. MORSE. Do you happen to know how many States there are, other than Pennsylvania, that have just the same kind of claims?

Mr. FOOTE. They are all paid, except—I will read you the list.

Mr. SIMS. You do not answer me why Pennsylvania held off for twenty years and did not do anything.

Mr. FOOTE. Pennsylvania has been before this committee a half a dozen times since that time—I do not say a half dozen times—

Mr. SIMS. Pennsylvania has collected a very large claim from the Government?

Mr. FOOTE. Yes, sir; Pennsylvania has collected the interest which it paid on its \$3,000,000 war loan to equip its volunteers which were mustered into the service of the United States. This matter was looked after just as soon as possible, as soon as I got to be the agent

of the governor, and I have been industriously trying to get the Congress of the United States to pay this item.

Mr. SIMS. We paid a large amount of interest, something over a million dollars, was it not?

Mr. FOOTE. Yes.

Mr. SIMS. Why was not this claim for interest included in that claim?

Mr. FOOTE. Because this was an entirely separate matter. It was a matter which escaped my attention at first, because I was engaged in the other matter, but subsequently it was brought to my attention, among other matters.

Mr. SIMS. There would have been no difficulty about having this item go into the same bill?

Mr. FOOTE. Exactly; but one was for a separate payment of interest. The three-million-dollar loan was one which the State made to raise money to equip its volunteers, and this was a separate item to reimburse the State for money which it paid under the peculiar circumstances I have related here this morning—that of calling out the militia to cooperate with the national forces.

Mr. SIMS. But in principle it is just the same. Why it was not included in the same bill I do not understand.

Mr. FOOTE. No, no; the principle is not exactly the same. The act of July 27, 1861, provided that the Secretary of the Treasury should reimburse to the governors of the various States the costs, charges, and expenses incurred by those States in equipping their volunteers which were subsequently mustered into the service of the United States.

Mr. MORSE. That is the point.

Mr. FOOTE. These men were never mustered into the service of the United States; therefore it is a dissimilar claim from those which were covered by the act of July 27, 1861.

Mr. SIMS. These troops were never mustered in?

Mr. FOOTE. No, sir.

Mr. SIMS. What did they do?

Mr. FOOTE. They cooperated with the federal forces as militia of the State of Pennsylvania.

Mr. MORSE. Is not the difference here, that in the other cases they were mustered into the service of the United States and were used for the purpose of the defense of the United States alone, while in this instance they were not mustered in and were used only a part of the time for the purpose of the defense of the United States, and may have been used by the State for suppressing riots within the State, or carrying out by the laws of the State, and for state purposes, and therefore there is a vast difference between the two?

Mr. SIMS. Well, it seems to me the principle is just the same, where the State paid interest in carrying out the federal obligations.

Mr. FOOTE. Exactly; there is no difference at all in principle.

Mr. SIMS. In this case I did not know, until now, that these soldiers were never soldiers of the United States.

Mr. FOOTE. No; they were not.

Mr. SIMS. Then the payment of this claim at all would be a matter of equity and liberality?

Mr. FOOTE. A matter of liberality and equity upon the part of this Congress of the United States to carry out what President Lincoln and Secretary Stanton said would be carried out.

The CHAIRMAN. That is, the governor of Pennsylvania was assured by President Lincoln and Secretary Stanton the repayment of this money if he raised it?

Mr. FOOTE. Yes, sir.

The CHAIRMAN. That the State would be reimbursed?

Mr. FOOTE. Every dollar of it.

Mr. SIMS. And it has been, according to the judgment of Congress and the accounting officers?

The CHAIRMAN. All of which was prior, Mr. Sims, to the decision in the New York case.

Mr. SIMS. I said according to the judgment of Congress and those who determined it at the time.

Mr. FOOTE. It virtually has been appropriated for, actually has been appropriated for; this never ought to be here; it ought to have been paid a half a century ago, forty-four years ago, because Congress appropriated the money to pay this very claim in this bill.

Mr. SIMS. Eight hundred thousand dollars?

Mr. FOOTE. Yes; but the accounting officers believed they were smarter than even Congress was; but let me say, Congress can do anything it wants to.

Mr. SIMS. That is the question that strikes me. Why did you not have a bill passed to pay the \$41,000 just as soon as the accounting officers did not allow it?

Mr. FOOTE. At that time I was not the agent of the governor nor attorney of the State. All of these interest items were suspended upon the question of legal liability. I suppose the agent of the governor conceived the idea that this claim was like other interest accounts and, therefore, it would not be paid. But after the New York case was decided then all of these States came in with their claims for interest, and they have been paid as expense accounts.

Mr. SIMS. The State virtually abandoned it after the statement of the accounting officers?

Mr. FOOTE. Under the act of 1902 allowances were paid to Maine, New Hampshire, Rhode Island, and Pennsylvania.

Mr. SIMS. Pennsylvania got an enormous appropriation.

Mr. FOOTE. Under the decision of the New York State case New York was paid \$131,515.81; New Hampshire, \$108,372.53; Rhode Island, \$124,617.79; Pennsylvania, \$689,146.29; Indiana, \$635,850.20; Iowa, \$156,417.89; Michigan, \$382,167.62; Ohio, \$458,559.36; Illinois, \$1,005,129.29; Vermont, \$280,453.56. Now when these payments were made—

The CHAIRMAN. Did those payments in each instance allow for interest and expenses paid by the States to get the loan?

Mr. FOOTE. Yes; in the State of Pennsylvania I recovered \$50,000 for gold premiums paid to get interest.

Mr. MORSE. For the equipment of troops not mustered in?

Mr. FOOTE. Mustered in, sir.

Mr. MORSE. Oh, yes; that is the difference.

The CHAIRMAN. There is one point I did not get quite clear in my mind. Is there some item that has been paid the State of Pennsylvania in addition to what is shown in this Senate report?

Mr. FOOTE. Yes; I was just coming to that. After this first payment had been made to Pennsylvania on its volunteer war loan Comptroller Tracewell took up the adjustment of other Western

States, and he decided that every dollar which the State had paid in interest was reimbursable, notwithstanding the fact that the Government may have, from time to time, reimbursed the State. You understand, when I settled the claim of Pennsylvania in the Court of Claims, I gave the Government credit for the reimbursements which had been made from time to time on its war expenses, and the first account was settled according to that basis. After the comptroller had settled the Western States, and paid no attention whatever to payments made from time to time, Congress at once opened the claims of Pennsylvania, Maine, New Hampshire, Rhode Island, and Indiana, on the basis of the settlement of the other States.

MR. SIMS. I took part in that discussion on the floor of the House, and I remember part of it was this, that the States, in order to get this money, sold bonds for a long time to run; the Government reimbursed them before the bonds matured, and yet they charged the Government with all the interest they paid on the bonds, and would not give the Government one cent of credit for the interest that would have accumulated.

MR. FOOTE. You have got it exactly. And so, after the comptroller had decided otherwise and those States had been paid according to this other basis of settlement, the claims of the State of Pennsylvania were reopened precisely upon the same basis as those of other States.

The chairman has said something about my discussion which has led off into another channel. Of course, I want to explain everything to the committee. The chairman suggested something about—

THE CHAIRMAN. I know it is a little past the hour for the convening of the House, but this is an important matter, and unless gentlemen are very anxious to get over there I would suggest that we take the liberty of continuing the hearing for a little while. Could you finish by 11.30, Mr. Foote?

MR. FOOTE. I think I can finish in five minutes.

Abandoning further discussion upon the subject-matter of these other loans, which were paid the States, because they are not material here; the only question for you to consider now is, in view of all this legislation, in view of the agreement made by President Lincoln and Secretary Stanton with Governor Curtin, and in view of the fact that the State in absolute good faith, at the time of this agreement, borrowed this money and paid this amount of interest: Ought not that act of 1866 to be carried out in good faith; ought not you to direct the accounting officers of the Treasury to do what Congress forty-four years ago said they must do? That is all there is in this case.

You won't get a single additional fact in connection with this case by sending it to the Court of Claims. If you did send it there you would get back the same set of facts. They would send to the Treasury Department and get the very facts that are now before this committee—they could not get them anywhere else: they are record facts, records which the Treasury Department's accounting officers have in their possession to-day and records which are as solemnly proven as any records in any case in the world can be proven. The accounting officers have accepted that proof and they have never disputed a word of it, and there is not a single fact in this case that has

been in dispute for a single minute. And, therefore, I want to say there is not a single element of help which the Court of Claims can give to you, even though you had jurisdiction, which you have not, to send this to the Court of Claims, under the Tucker Act. That court would simply send over to the Treasury Department and say, "Give us the facts in this case of Pennsylvania," and they would send to you precisely what you have here to-day, and those facts would simply be a restatement of the facts which I have undertaken to give you here to-day, that Congress has absolutely paid this claim once, but that these accounting officers have refused arbitrarily to carry out the mandate of that statute.

There is not a question of injustice or inequality in this case; everything is as clear as it can be, and it is only for this committee now to say whether it shall follow the beaten path which prior committees have already made, whether it shall adopt what the Senate has already done and reenact what the Congress of the United States did forty-four years ago and pay this meritorious claim based upon a contract, Mr. Chairman, made by the greatest men of that century.

The CHAIRMAN. Is that \$800,000 that was appropriated available?

Mr. FOOTE. Not at all; it was covered into the Treasury years ago. Gentlemen, you need not be afraid——

The CHAIRMAN. A bill was reported out of the committee to cover this claim in the last Congress?

Mr. FOOTE. Yes, sir.

The CHAIRMAN. Was that substantially identical with this bill?

Mr. FOOTE. It was precisely the same, with the addition that \$50,000 was appropriated to carry out its provisions.

The CHAIRMAN. That bill contained section 2, which has been stricken out by the Senate?

Mr. FOOTE. Yes; this bill is far less objectionable to the committee, it seems to me, than that was.

Mr. HAUGEN. When was this first presented to Congress?

Mr. FOOTE. I can not tell you, sir; it has been here for twenty-five years.

Mr. SIMS. This provision is mandatory; it is not a question for the accounting officers to settle. This commits Congress to the payment of the amount. The section reads:

That the sum of fifty thousand dollars, or so much thereof as is necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay whatever money may thus be found due the State.

Mr. FOOTE. That is what we want them to do.

Mr. HAUGEN. Have we any statement from the Treasury Department showing the amount due, or admitting the amount due?

Mr. FOOTE. Yes, sir.

Mr. HOLLOWAY. There was a statement in the last Congress.

Mr. FOOTE. There was a statement from the Treasury Department admitting all these facts and stating this item ought to be paid, but they have no jurisdiction.

Mr. SIMS. They admit the fact that this \$41,000 was interest paid by the State of Pennsylvania on money they borrowed?

Mr. FOOTE. Yes.

Mr. SIMS. The Treasury Department admits that, but the Treasury Department, as I understand, does not claim it is a legal liability against the United States?

Mr. FOOTE. No; until you say they shall pay it.

Mr. SIMS. This bill says they have to pay it.

Mr. FOOTE. I have been before the comptroller in the case and he admits the justice of this claim.

Mr. SIMS. That is your personal view?

Mr. FOOTE. He says it is *res adjudicata*; that administrations have come and gone, and you know the rule that they can not reopen a claim that was disposed of by a preceding administration.

Mr. SIMS. The Senate Committee on Claims has refused to consider hundreds of claims on accounts of laches?

Mr. FOOTE. This is not laches. If you will go over the records here, you will find the State of Pennsylvania has been coming here for ten or fifteen years or more, maybe twenty years, asking you to pass this bill.

Mr. MORSE. Now, then, these were state troops that were never mustered in?

Mr. FOOTE. Yes, sir.

Mr. MORSE. At the same time other States may have had state troops which were never mustered in, and never used in the service of the United States, and those other States would have no equitable claim because their troops were never mustered in or used in the service. The State of Pennsylvania has this equitable claim on account of the fact that at the time of the invasion of Pennsylvania, prior to the battle of Gettysburg, the state troops were used in the defense of the nation. Is that it?

Mr. FOOTE. That is right, sir.

Mr. MORSE. Now, let us—

Mr. SIMS. Is that not admitting it too strongly?

Mr. MORSE. Possibly it is. But let us suppose that other States raised troops, state troops, which were used in the defense of the nation and never mustered into the service of the United States; now, then, if these other States had money in the treasury, did not borrow money, but had it in their treasuries and paid those troops, would they not have just as much right to come before Congress and ask for the interest on the money they did have and did use as Pennsylvania has to ask for interest on the money it did not have and had to borrow?

Mr. FOOTE. I will answer that question by saying that under the law there was no expense to the State if it had this money in its treasury to use for disbursements for military purposes; it was not out anything except the actual money which it paid. To adopt that principle would permit every State to now come in and say: "We want interest on the money which we took out of our treasury and paid to run the Government."

Mr. MORSE. That is exactly what I am afraid of—that it will establish a precedent.

Mr. FOOTE. Not in the slightest; it can not establish that principle because the Supreme Court in this case has decided the lines of liability by saying that only interest which the State paid for money which it borrowed to pay troops is part of the legitimate expenses of the Government; if the State did not pay any interest it can not get any interest, for it was not an expense to the State, they can not say they want to be reimbursed for expenses they have never been put to. Now, Pennsylvania was situated a little differently from any other

State, Mr. Chairman; the State of Pennsylvania stood like an impenetrable wall of cement, I might say, against the invading hosts of that fearless and intrepid army of the Stars and Bars; it was upon our borders that the greatest battle of that conflict was fought, and this militia, and the militia of that State, were called into the service of the Federal Government and cooperated with the national forces in that campaign; that service was recognized as service for the Federal Government and not as service for the State of Pennsylvania; and when Lee crossed the borders of Pennsylvania again into Virginia the militia of Pennsylvania, cooperating with the national forces, followed him across the border of Pennsylvania into a sister State. That shows you that Pennsylvania cooperated with the national forces, and that service was recognized by the Federal Government, and these troops were paid by the Federal Government, so far as being equipped and fed was concerned. The Government actually paid these troops, it clothed these troops, it took care of these troops down to the time of paying for their services. Then the State of Pennsylvania paid them, borrowed the money and paid them, and Congress said, forty-four years ago, you can not make the promise good unless you pay the interest which Pennsylvania paid to get that money. It is equitable; there is nothing that can be said against it on any ground of inequity or injustice.

Mr. SIMS. Its basis is in equity; there is no legal claim at all?

Mr. FOOTE. There is no legal claim; I stand here to admit that fact; it is not reimbursable under the act of July 27, 1861, because these men were not actually mustered into the service of the United States.

Mr. SIMS. How long did they serve under this call?

Mr. FOOTE. Sixty days.

Mr. SIMS. And only in the State, not out of it?

Mr. FOOTE. They cooperated with the national forces, as the record shows, in following General Lee across the border into Maryland, and several of the militiamen were killed after they had crossed the border; they were in the battle of Gettysburg, a battle which was not fought for the State of Pennsylvania; they cooperated with the national forces there in that bloody conflict.

Mr. SIMS. I was asking for information only.

Mr. FOOTE. And they laid down their lives, just the same as those in the national forces, and the Government said those men were entitled to payment by the Federal Government.

Mr. SIMS. I understand they are all entitled to pensions like any other soldiers, but this question is one of the reimbursement of the State of Pennsylvania.

Mr. FOOTE. It simply appeals to your sense of equity and justice.

The CHAIRMAN. I think in the consideration of this claim we may safely assume, under the decisions of the court and of the department, that a claim for interest paid by the claimant is a legitimate claim?

Mr. FOOTE. Yes, sir.

The CHAIRMAN. All other things being equal?

Mr. FOOTE. Yes, sir; as an expense; not as interest, but as an expense.

The CHAIRMAN. That line of distinction seems to have been clearly drawn. The State of Pennsylvania would not think of coming here, of course, and claiming interest on this indebtedness from the time the principal was paid by the Federal Government?

Mr. FOOTE. Oh, no.

Mr. HAUGEN. Why was not this included in other bills; why has it not been disposed of before; I understand this has been before Congress before?

Mr. FOOTE. A great many times. The only answer is it was not, in contemplation of law, precisely the same as the interest claims of other States.

Mr. HAUGEN. But that question was settled twenty years ago.

Mr. FOOTE. I know; but since twenty years ago, since that time, all the States have come in under the decision in the New York case, and this claim has been before committee after committee.

The CHAIRMAN. Do you know whether there are any other States now having similar claims?

Mr. FOOTE. My information, Mr. Chairman, is that this is the only claim that is unpaid.

Mr. MORSE. Were any other similar claims ever paid?

Mr. FOOTE. I think so.

Mr. MORSE. Can you cite us to any?

Mr. FOOTE. I can not, but I think very likely that if the records are looked up you can ascertain. I think Mr. Holloway may know.

Mr. HOLLOWAY. Missouri.

Mr. MORSE. Any other State than Missouri? I know Missouri used troops in the defense of the nation that were not mustered into the service of the Government.

Mr. FOOTE. I can not tell you. Mr. Holloway may be able to tell you. Missouri has been paid the same, he says.

BRIEF FILED BY MR. FOOTE.

BRIEF IN SUPPORT OF SENATE ACT NO. 6951, FOR THE RELIEF OF THE STATE OF PENNSYLVANIA.

The CHAIRMAN AND GENTLEMEN OF THE WAR CLAIMS COMMITTEE.

GENTLEMEN: A bill providing for the payment of this claim has been reported with a favorable recommendation by your committee several times, and twice at least by the Claims Committee of the Senate. It has recently been passed by that body. At the first session of the Sixtieth Congress your committee, in Report No. 1136, reported unanimously in favor of the pending measure.

There is not a single question of fact respecting this claim in dispute. It is admitted by the Treasury Department that the State of Pennsylvania expended \$671,476.43 in payment of the services of its militia called into the service of the United States at the request of the President in June, 1863, to aid in the general defense against the invasion of General Lee into that State.

It is admitted that the State borrowed the money, through Governor Curtin, of certain bankers in Philadelphia, with which to make that payment, and that there was paid by the State \$41,890.71 as interest on the money thus borrowed, besides \$52.47 in costs connected with said loan.

It is also admitted that the legislature of the State appropriated the money to pay these several items, and by its joint resolution passed the 3d day of February, 1865, petitioned the General Government to refund the same to the State in conformity with the

assurances of President Lincoln and Secretary Stanton that the same would be done.

It is shown by the record that in pursuance to said resolution the Congress of the United States on the 12th day of April, 1866, appropriated the sum of \$800,000, or so much thereof as might be necessary, to pay said claim of the State.

It also appears that in pursuance to said appropriation a Treasury warrant was drawn to the order of the governor of the State for the sum of \$667,074.35, on the 18th day of June, 1866, and that on the 2d day of March, 1892, another warrant was so drawn for the sum of \$3,732.50, making in all the sum of \$670,806.85, to apply on the State's claim, being \$669.58 less than the amount paid by the State for and on account of the services of its militia.

By a memorandum made by the Secretary of the Treasury, attached to said first payment, it appears that said payment was made as an advance to the State, and that the accounts as approved by the Secretary of War, not having been fully stated and passed upon by the accounting officers of the Treasury, would be subject to reexamination and final settlement by said officers thereafter.

All of the foregoing facts are disclosed by a report from the Treasury Department now in the hands of this committee, and they can not be controverted. Such being the case, there is no other department or court which could afford this committee any assistance whatever in the disposition of this claim: especially is this so in regard to the Court of Claims, because even if it were sent to said court under the Tucker Act, which can not legally be done, the court could not consider a single legal question involved in it, but would be confined in its jurisdiction to simply a finding of facts, and these it would obtain from the Treasury Department, which has already given this committee all the facts which it could furnish said court.

It must be borne in mind that unless a bill is pending before this committee making an appropriation of money it can not be sent to that court under said act; and that unless there are facts in dispute the claim can not be referred to said court under the Bowman Act. Under the peculiar status of this claim, therefore, the court would have no jurisdiction to consider it if sent to it under either of said acts; because, aside from legal objections, which are insurmountable, which prevent this being done, the Government admits all of the facts in support of this claim, and there is not a single one in controversy. To attempt, therefore, to dispose of it by either of these methods would not only be unjustifiable, but would be doing the State of Pennsylvania a great injustice, one which would involve delay and expense without serving any practicable purpose whatever.

I refer to all these facts and circumstances because when brought to the attention of Congress, just after the war closed, what did it do? Undertake to repudiate this just and sacred debt? No. The President had said that if the State would raise the money and pay off these men for their services that the United States would consider the debt one of honor and that the State should be reimbursed in full for its expenditure on that account. And so a bill was introduced in Congress making an appropriation for that purpose, and if the committee will take the pains to read the proceedings there when that bill was under discussion (Congressional Globe, 39th Cong., 1st sess., p. 1553), it will find that its object and purpose was not only to pay the sum

of \$671,476.43, which the State actually borrowed and paid these troops, but also to pay the interest on said sum so borrowed, and that the bill was amended for that very purpose. We have never until this time examined that record, but since we have there remains no more doubt that Congress included the interest item in that appropriation than there exists a doubt that the bill itself became a law.

These interest and cost items, therefore, have once been appropriated for by said act which was approved forty-four years ago the 12th day of last month; but the accounting officers of the Treasury Department arbitrarily suspended payment of them upon the theory, undoubtedly, that as an interest claim the United States was not liable to pay them, forgetting that Congress then and now has the power to pay interest upon every debt which the Government owes, and that the inhibition against allowing interest on such claims only extends to the courts of the United States.

If there were no other facts in this case to bring to the attention of this committee this one alone should convince it that this act of the Senate directing the accounting officers to state a liability to pay this interest is only to carry out the original mandate of Congress to which we have referred, and that such being the case there should not be one single voice raised against the measure.

But let us suppose that Congress did not intend to include this interest account in said appropriation, the same would now be reimbursable to the State upon the principle announced by the Supreme Court of the United States in the interest claim of the State of New York against the United States, reported in 160 United States Reports, pages 599, 619, which the Senate report refers to on page 2, No. 488.

That was a case precisely like this. The State of New York paid \$131,188.02 as interest on money which it borrowed to equip its troops for service in the civil war. Congress, on the 27th day of July, 1861, passed an act directing the Secretary of the Treasury to refund to the governor of each State, or his agent, the costs, charges, and expenses properly incurred in equipping the State's quota of troops for said service. The State of New York, the same as all the other Northern States, was obliged to borrow the money at interest for that purpose. After the war closed the State filed its claim for said expenditures, which was paid. Subsequently it filed a claim for the interest which it had paid, as above, on its war loan. The payment of that claim was suspended by the accounting officers of the Treasury, just as they suspended payment of this claim. Finally the claim was referred to the Court of Claims under the provisions of section 1063 of the Revised Statutes of the United States. I had the honor of representing the Government in the trial of the case (26 Ct. Cls., pp. 467, 481), and I took the position that inasmuch as the claim was one for interest it could not be allowed in consequence of the inhibition contained in section 1091 of the Revised Statutes, which prohibits the court from allowing interest on any claim against the Government unless authorized to do so by an act of Congress. The court refused to accept my view of the case and entered a judgment for the State for \$91,320.84, being the interest which it paid on money borrowed in the city of New York for war purposes; but refused to allow the State for interest to the amount of \$39,867.18 which it had paid to the canal fund for money used from that source for the same purposes.

Both the State and the United States appealed from the decision of the Court of Claims to the Supreme Court of the United States which (in vol. 160, pp. 621, 622) held:

"That the interest paid by the State on its bonds issued to raise money for the purposes expressed by Congress (in the act of July 27, 1861, *supra*) constituted a part of the costs, charges, and expenses properly incurred by it for those objects. Such interest when paid became a principal sum, as between the State and the United States; that is, became a part of the aggregate sum properly paid by the State for the United States. The principal and interest so paid constitute a debt from the United States to the State. It is as if the United States had itself borrowed the money through the agency of the State. We therefore hold that the court below did not err in adjudging that the \$91,320.84 paid by the State for interest upon its bonds issued to defray the expense to be incurred in raising troops for the national defense was a principal sum which the United States agreed to pay, and not interest within the meaning of the rule prohibiting the allowance of interest accruing upon claims against the United States prior to the rendition of judgment thereon."

The court then proceeded to say that the other item of interest on account of the canal-fund loan was as much reimbursable to the State as the other item was, because that fund had been set apart by the canal commissioners as an interest-bearing fund and hence that fund was as much entitled to interest on the money of it which the State used as it would have been had the same been loaned to an individual. Accordingly a judgment was directed to be entered in favor of the State for both of said items, amounting to \$131,188.02, as stated.

What was the result of that decision? Why, every Northern State east of the Mississippi River has been refunded by the General Government the interest which it paid on loans created for war purposes the same as the State of New York was. And what is more, these accounts have all been settled by the accounting officers of the Treasury under the provisions of legislation just like this which we are now considering which directs these officers to settle a like claim for the State of Pennsylvania.

In view, therefore, of all these facts, is there a single voice that can be raised in opposition to the payment of this doubly meritorious claim? Why should there be any hesitancy about allowing the accounting officers to restate this account? Is it believed that they would state a liability against the United States which ought not to be paid? Congress has once said that it should be paid, but those officers have arbitrarily thwarted the legislative will, and now, after a reconsideration of the matter, admit the justness of the claim, but plead *res adjudicata*. It is the first time in my experience that I have discovered that either an individual or a State was estopped from asserting a claim to money which Congress has given by an appropriation simply because the officer who was directed to pay it refused to perform his duty. I say, without hesitation, that no more just and meritorious claim was ever before this committee. It was created by virtue of a patriotic compact entered into between President Lincoln, Secretary Stanton, and Pennsylvania's war governor, Andrew G. Curtin. And it was the means by which the militia of that State were enabled to cooperate with the national forces in helping to drive the army of General Lee from her borders.

Mr. Chairman, I love that grand old Commonwealth which gave me birth. Her history and her glorious traditions are ever dear to me. She stood like an impenetrable wall of adamant against the invading hosts of that fearless and intrepid army of the stars and bars. Within her borders was fought the greatest battle of that civil contest. During those eventful days her best and bravest sons crimsoned the soil of that battlefield with their blood that this Republic might live and this Union be maintained through all the ages.

This great Government has never yet broken its promise to the State, which grew out of her noble and patriotic example. Forty-four years ago it undertook to fulfill a compact made between the greatest men of that century, by which the State came to the rescue of the Federal Government in a great crisis of its history. But those whose duty it was to execute the legislative mandate in that regard and make that promise good have all these years refused to perform their duty. Time after time this committee has said that that duty must be performed, and the State is again here asking that once more you shall say by your report that these officers must perform a duty which has been so long deferred.

(Thereupon the committee adjourned.)



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